

ARKANSAS COURT OF APPEALS

EN BANC
No. CA 08-922

DANIEL HEARNE and DEBORA
HEARNE

APPELLANTS

V.

DIANE BANKS

APPELLEE

Opinion Delivered March 11, 2009

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. CIV-2005-836]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

REBRIEFING ORDERED

PER CURIAM

This is the third appeal concerning the ownership of certain real property in Sebastian County. We cannot reach the merits of appellants' appeal at this time because their brief is not in compliance with Ark. Sup. Ct. R. 4-2(a) (2008).

In *Hearne v. Banks*, No. CA00-396 (Ark. App. Dec. 20, 2000) (*Hearne I*), a divorce case, we decided that the property was owned by three individuals as joint tenants with right of survivorship. In *Hearne v. Banks*, No. CA07-570 (Ark. App. Feb. 20, 2008) (*Hearne II*), this court reversed in part and remanded the circuit court's ruling in a partition suit. We held that the circuit court erred in finding that certain issues decided in *Hearne I* were not res judicata in the partition suit. Because the circuit court found that res judicata did not apply, it did not address certain factual issues that were critical to the resolution of the partition suit. In *Hearne II*, we directed the circuit court to address those issues. Following the remand in *Hearne II*, the

circuit court held another hearing and decided the issues we directed it to decide in *Hearne II*. This appeal comes from that decision.

Our rules require an appellant to abstract all material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the court for decision. Ark. Sup. Ct. R. 4-2(a)(5). Furthermore, on a second or subsequent appeal, the abstract must include a condensation of all pertinent portions of the transcript filed on any prior appeal. *Id*; *Lee v. State*, 375 Ark. 124, ___ S.W.3d ___ (2008). Our rules also require that the appellant include all relevant pleadings in the addendum portion of his brief. Ark. Sup. Ct. R. 4-2(a)(8).

In the present case, appellants failed to abstract all of the testimony from the hearings held prior to the earlier appeal. Appellants reference some of the testimony in their statement of the case, along with citations to the record. They even included an abstract of one witness's testimony in *Hearne II* in their addendum. However, the circuit court's order from which the present appeal was taken includes citations of testimony of other witnesses that are not abstracted in this appeal. Further, the pleadings from the first appeal are not included in the addendum. Instead, only this court's opinion from the *Hearne II* appeal, the circuit court's order on remand, and the notice of appeal from that order are included in the addendum.

Accordingly, we order appellants to file a substituted brief, curing the deficiencies in the abstract and addendum, within fifteen days from the date of entry of this order. After service of the substituted brief, the appellee shall have an opportunity to file a responsive brief in the time prescribed by the supreme court clerk, or to rely on the brief previously filed in this appeal.

Rebriefing ordered.